

Date: October 3, 2012

To: City Council

From: Mayor Zimmer

Re: Affordable Housing Ordinance

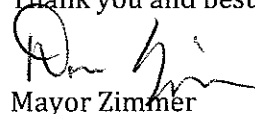
The Affordable Housing Ordinance that was introduced at the September 5th City Council meeting was referred to the Planning Board, per the Municipal Land Use Law requirements, for a determination of whether the ordinance is consistent with the Master Plan. After much discussion and review of the report by the Planning Board Planner regarding the ordinance, the Planning Board declared that the ordinance is not inconsistent with the affordable housing objectives in the Housing Element of the Master Plan of the City of Hoboken, but will have the effect of creating inconsistencies with other goals and objectives in the Master Plan.

The Planning Board raises some concerns regarding this ordinance that I want to bring to your attention. They expressed concern that this ordinance could lead to a significant increase in the number of zoning variance applications and much greater density of development requested in each application. This increased density could in turn significantly impact parking, traffic, flooding, neighborhood scale, and other issues.

It is my intent to move forward with creating a Housing Element and Fair Share Plan (affordable housing plan). The City has hired a professional planner to complete a review of Hoboken's affordable housing. I support passing this Affordable Housing Ordinance as a stopgap measure while the planning process is underway. Once the affordable housing planning process is complete, including giving full consideration of the issues raised by the Planning Board, it will be necessary to reevaluate this ordinance and make all appropriate changes in order to conform with the overall affordable housing plan and ensure that all of the objectives of the master plan are considered and balanced. The City will also be seeking to hire an attorney to work hand in hand with the professional planner as the review process is conducted and to help create the affordable housing plan.

We will ask Ron Cucchiaro, special counsel on this matter, to attend the meeting on October 17th to advise the City Council directly on this important issue.

Thank you and best regards,



Mayor Zimmer

Adopted _____, 2012

CITY OF HOBOKEN PLANNING BOARD

**RESOLUTION CONFIRMING MASTER PLAN CONSISTENCY
OF ORDINANCE ENTITLED "AN ORDINANCE REQUIRING
THE SET-ASIDE OF LOW AND MODERATE INCOME
AFFORDABLE HOUSING UNITS IN RESIDENTIAL AND MIXED
USE DEVELOPMENTS, INCLUDING REDEVELOPMENT
PROJECTS, THAT SEEK OR RECEIVE AN INCREASE IN
DENSITY, A DENSITY BONUS OR OTHER COMPENSATORY
BENEFIT AND ESTABLISHING REQUIREMENTS FOR
AFFIRMATIVE MARKETING, SALE, RENTAL, AND
AFFORDABILITY CONTROLS FOR AFFORDABLE HOUSING".**

WHEREAS, Section 26.a of the Municipal Land use Law [N.J.S.A. 40:55D-26.a] requires the Governing Body, prior to the adoption of a land development regulation or revision or amendment thereto, to refer same to the Planning Board for a determination of whether the regulation, revision or amendment is consistent with the Master Plan; and

WHEREAS, the statute provides the Planning Board 35 days from the date of referral to conduct its review and submit a report to the Governing Body setting forth its recommendations and determinations as to Master Plan consistency which the Governing Body must evaluate and consider prior to the final adoption of the development regulation; and

WHEREAS, the City Council of the City of Hoboken introduced at first reading an Ordinance entitled "An Ordinance Requiring the Set-Aside of Low and Moderate Income Affordable Housing Units in Residential and Mixed Use Developments, Including Redevelopment Projects, That Seek or Receive an Increase in Density, a Density Bonus or Other Compensatory Benefit and Establishing Requirements for Affirmative Marketing, Sale, Rental, and Affordability Controls for Affordable Housing" on September 5, 2012 and thereafter

forwarded same to the Planning Board for Master Plan consistency review pursuant to the aforementioned statute; and

WHEREAS, the Ordinance is scheduled for second reading and public hearing on October 3, 2012; and

WHEREAS, the Board's planning consultant has reviewed the Ordinance and issued a Report that is attached hereto as Exhibit "A" confirming that the Ordinance is not inconsistent with the affordable housing objectives in the Housing Element of the City's Master Plan while noting certain deficiencies in the Ordinance and the possibility that the application and implementation of the Ordinance may create inconsistencies with other goals and objectives in the Master Plan. The Report sets forth certain recommendations for City Council to evaluate before taking final action on the Ordinance. The contents of the Report are incorporated herein as if set forth herein at length; and

WHEREAS, the Planning Board has thoroughly reviewed the Ordinance and the Report issued by its planning consultant and has found and determined that the Ordinance is not inconsistent with the affordable housing objectives in the Housing Element of the Master Plan but recommends that City Council withhold final action on the Ordinance until it evaluates the concerns and recommendations of the Board's planning consultant as noted in the attached Report.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Hoboken that the Ordinance introduced at first reading on September 5, 2012 by the City Council of the City of Hoboken entitled "An Ordinance Requiring the Set-Aside of Low and Moderate Income Affordable Housing Units in Residential and Mixed Use Developments,

Including Redevelopment Projects, That Seek or Receive an Increase in Density, a Density Bonus or Other Compensatory Benefit and Establishing Requirements for Affirmative Marketing, Sale, Rental, and Affordability Controls for Affordable Housing” be and is hereby declared to be not inconsistent with the affordable housing objectives in the Housing Element of the Master Plan of the City of Hoboken but will have the effect of creating inconsistencies with other goals and objectives in the Master Plan.

BE IT FURTHER RESOLVED, that the recommendations set forth in the planner’s Report are adopted as the Board’s recommendations to City Council and the Board recommends that City Council withhold final action on the Ordinance until the aforesaid recommendations and concerns of the Board’s planner are considered and evaluated.

BE IT FURTHER RESOLVED, that the Board Secretary be and is hereby directed to immediately transmit a certified copy of this Resolution to the City Clerk of the City of Hoboken so that same is in the possession of City Council prior to the second reading and public hearing on the Ordinance on October 3, 2012.

CERTIFICATION

I, Patricia Carcone, Secretary of the City of Hoboken Planning Board, do hereby certify that the above Resolution was considered and adopted by the Planning Board of the City of Hoboken at a regularly advertised meeting held on October 21, 2012.


Patricia Carcone

DECISION AND RESOLUTION

Meeting Date: 10/2/12

ROLL CALL VOTE:		Motion	YES	NO
<u>Present</u>	KEITH FURMAN, Chairman		✓	
<u>Present</u>	DANIEL WEAVER, Vice Chair	✓		
<u>Present</u>	BRANDY FORBES		✓	
<u>Present</u>	FRANK MAGALETTA		✓	
<u>Present</u>	CAROL MARSH			
<u>Present</u>	ANN GRAHAM	✓	✓	absent
<u>Present</u>	NADIA MIAN			
<u>Present</u>	RAMI PINCHEVSKY		✓	absent
<u>Present</u>	GARY HOLTZMAN		✓	
<u>Present</u>	GILL MOSSERI – 1 st Alternate			
<u>Present</u>	DEMETRI SARANTITIS – 2 nd Alternate			absent absent

EXHIBIT "A"

EFB Associates, LLC.

Community and Land Use Planners

To: Keith Furman, Planning Board Chair
Hoboken Planning Board Commissioners

From: Eileen Banyra, P.P., AICP
Board Consultant

Date: October 1, 2012

Re: AN ORDINANCE TITLED AN ORDINANCE REQUIRING THE SET-ASIDE OF LOW AND MODERATE INCOME AFFORDABLE HOUSING UNITS IN RESIDENTIAL AND MIXED USE DEVELOPMENT PROJECTS, THAT SEEK OR RECEIVE AN INCREASE IN DENSITY, A DENSITY BONUS OF OTHER COMPENSATORY BENEFIT AND ESTABLISHING REQUIREMENTS FOR AFFIRMATIVE MARKETING, SALE, RENTAL AND AFFORDABILITY CONTROLS FOR AFFORDABLE HOUSING

The City Council, at their meeting of September 5, 2012, introduced and had the first reading of an ordinance titled "An Ordinance Requiring the set-aside of Low and Moderate income Affordable Housing units in Residential and Mixed Use Development Projects, that seek or receive an increase in density, a density bonus or other compensatory benefit..." and establishing requirements for affirmative marketing, sale, rental and affordability controls for affordable housing. This ordinance has been forwarded to the Planning Board for the Board's determination of whether or not the ordinance is inconsistent with the City's planning documents (2004 Master Plan, 2005 Housing Element/Fair Share Plan and 2010 Reexamination Report).

The Municipal Land Use Law (MLUL) 40:55D-26 a. requires that prior to the adoption of any zoning ordinance, the City Council forward all proposed development regulations, or any revisions or amendments thereto, to the Planning Board for consideration. Upon receipt of such a request the Planning Board is required to review the ordinance and transmit within 35 days a report to the government body identifying whether or not any provisions in the proposed development regulations are inconsistent with the master plan. At this time, the Board may also make recommendations concerning any such inconsistencies, as well as any other recommendations that it deems appropriate. The proposed ordinance is scheduled for review by the Planning Board at its regular meeting on October 2, 2012.

The proposed Housing Ordinance seeks to replace Article XVII Affordable Housing (AHO), Sections 196-68 through 196-74. This ordinance was recently the subject of a court ruling whereby the ordinance was determined to be invalid.

I have reviewed the ordinance against the City documents and have found that the provision of affordable housing is identified and recommended throughout the City's Master Plan and Reexamination Report and the intent of the proposed ordinance is not inconsistent with these documents. However, the substance of the ordinance as currently drafted is flawed and its implementation presents serious questions and issues which undermine other sections of these planning documents.

For example, the Master Plan calls for both affordable housing and maintenance of the scale and character of residential neighborhoods, yet the ordinance's indiscriminate application to all planning

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applications and to zones such as the R-1, R-2 and R-3 zones could alter density and significantly change the character of these zones. (See attached Master Plan excerpts.)

Some of the ordinance issues identified include lack of specificity regarding density bonuses, options for residential construction, ambiguous language regarding required and exempt properties and as reflected above, implication in the R-1 through R-3 zones which may undermine their character/scale. The ordinance will result in many applications to the Board of Adjustment (planning by variance) which is in contradiction of both Municipal Land Use Law and case law. The proposed ordinance poses serious questions and issues that require additional legal and planning scrutiny. It would be advisable that the ordinance be evaluated by the City's newly retained housing expert, Ms. Shirley Bishop, PP, who can help to insure that the ordinance is consistent with any future Housing Plan for the City.

Examples of Issues

The proposed ordinance requires an affordable housing set-aside for all development of property in the City subject to approval by either the Planning Board or Zoning Board for the following applications:

- a. site plan;
- b. subdivision or conditional use;
- c. all "d" variance applications involving an increase in residential density;
- d. approvals in a Redevelopment plan which include residential uses.

The ordinance also identifies what is **exempt** from its application:

- a. permitted uses; (*conflicts with a and b above*);
- b. first 10 units of a substantial rehabilitation project; (*may conflict with a & b above*)
- c. application undertaken by a nonprofit developing new or rehab housing;
- d. development pursuant to a redevelopment plan and not requesting a density or floor area ratio "d" variance. (*Conflicts with d above*)

All of the above applications are subject to a 10% affordable housing set-aside.

Noted below are examples of conflicts, concerns and questions raised by the proposed ordinance. They are as follows and are in no particular order.

- Conditional uses such as bars, restaurants, nursery schools, churches, funeral homes, sidewalk cafes, offices above the street use would all be subject to the ordinance.
- The rehabilitation of more than 10 units may be a permitted use. It is unclear whether or not that type of application would be subject to the proposed ordinance.
- The construction of a 15 dwelling unit (10,000 sq. ft. lot) apartment building would be a permitted use. The language is such that this may or may not be subject to the ordinance where an 11-unit rehabilitation project is specifically required to provide affordable housing.
- In a recent submittal to the Planning Board for a 15 unit residential project, a fiscal analysis conducted by the City determined that it wasn't fiscally viable to require one of the 15 dwelling

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units as affordable units. As a result, the developer made a cash contribution toward housing in lieu of construction. The ordinance provides no such mechanisms other than construction.

- No mechanism other than construction is identified for non-residential development.
- Since there are no density bonuses identified, there may be a negative impact to land value as a result of the application.
- The requirements of the Compliance Plan conflicts with the statutory Municipal Land Use Law timeframes.
- In the I-1(W) zone, a PUD is a permitted use. The application is both a site plan and a permitted use. The ordinance is unclear as to whether or not it is subject to or exempt from the affordable housing ordinance.
- For residential uses in the R-1 through R-3 zones, the construction of one extra unit will result in a variance application (Density) to the Board of Adjustment.
- In the I-2¹ zone, residential uses are not permitted uses. Currently there are multiple Use variance applications, which include residential, before the Zoning Board. My concerns with the proposed ordinance are:
 - The ordinance requirement for affordable housing may provide an additional supportive argument (inherently beneficial) and the more relaxed legal proofs (Sica) to advance otherwise non-conforming uses.
 - To accommodate the additional (affordable) housing, the buildings will invariably increase in height and density in these areas. Again, this is by a variance process and not through a planning process.

While the City does not have a Housing/Fair Share Plan that has been approved by COAH, a review of the 2005 Housing Element/Fair Share plan indicates that the city had a surplus of affordable housing and did not have a COAH obligation. Additionally, the surplus may be attributed to future Third Round requirements. That being said, the City's planning documents still identify both a commitment and desire to provide affordable housing and to protect the affordable housing whose controls may be expiring. The City's affordable housing policies will be reviewed by Ms. Shirley Bishop, PP, who is an acknowledged expert in this area and whose practice is specific to affordable housing.

It is my opinion that the ordinance in its current form contains significant questions and conflicts that require attention prior to its adoption. These conflicts potentially undermine other areas of the Master Plan and Reexamination Reports, thus rendering it inconsistent with these documents.

cc: Ron Morgan, Esq.

¹ The I-2 zone is the area known as the SW, which is currently the subject of a number of large "D" variance applications.

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Master Plan Sections and Potential Conflicts

The following extracts from the Master Plan and/or Reexamination Report identify sections of the Planning Documents that are supportive of affordable housing or where there may be conflicts as described above.

Neighborhood Development and Scale

- **Promote compatibility in scale, density, design, and orientation between new and existing development.** *Maintaining the desirable character of Hoboken means acknowledging the relationship between old and new development.* Master Plan Goal
- **Residential Districts**
There are three residential districts in the City: the R-1, R-2, and R-3 Zones. Residential buildings and retail businesses and services (in accordance with certain regulations) are permitted principal uses in all three zones. Additional uses such as schools or restaurants are permitted in these zones as accessory or conditional uses. Maximum permitted building height is 40 feet or three stories in the R-1 Zone. Maximum permitted building height in the R-2 and R-3 Zones is 40 feet and three residential stories, regardless of whether or not ground level parking is provided. Maximum permitted density is limited in all three residential districts by requiring a minimum site area of 660 square feet per dwelling unit, which permits four dwelling units on a "typical" 2,500-square foot lot (as "rounding up" is currently permitted).²
- Master Plan
- **Promote and enhance Hoboken's historic character and design image.** *One of Hoboken's defining traits is its compact grid lined with many attractive older buildings. It is this character that contributes to the City's neighborliness and its desirability as a place both to visit and to live, as well as to its walkability. Additional detailed recommendations are provided throughout this plan that address this general concept, but the overall objective should be for the City to do all it can to ensure Hoboken reinforces what separates it from suburban communities, or even from other urban areas that no longer have these traits.-* Master Plan Goal
- **Vision statement:** *Residential areas with limited commercial uses serving the local population, as well as certain institutions, with historic scale and attractively designed buildings.*
- Land Use Plan
- **R-1 Residential 1:** *This land use designation encompasses essentially the entire existing R-1 Zone. It represents the City's most intact areas of pedestrian-scaled historic development. The existing zoning regulations for this designation should remain in place, with modifications as detailed elsewhere in the Land Use Plan Element.* - Land Use Plan
- **R-2 Residential 2:** *While there were once differences between the existing R-2 and R-3 Zones that warranted their separate designations, these distinctions have almost entirely disappeared in recent years. These changes have been reflected by the bulk regulations in the Zoning*

² Rounding up is no longer done. The "rounding up" to a whole dwelling unit was the subject of a court case and was overturned.

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Ordinance for these two zones, which are exactly the same, although their lists of permitted uses vary somewhat. This designation should therefore encompass those areas of the existing R-2 and R-3 Zones that have not been placed in other land use designations. The existing zoning regulations for these districts should remain in place, with modifications as detailed elsewhere in the Land Use Plan Element. - Land Use Plan

- **Maintain lower densities and heights in the residential zones** – Reexamination Report

Housing Recommendations – Master Plan

- **Provide diversity in types of housing.** Since its earliest days, Hoboken has welcomed residents of various cultural, ethnic, and economic backgrounds. This diversity is partly due to the mix of housing types in the City. For Hoboken to remain a place where a wide variety of residents can find a home, a mix of housing types must continue to be provided in any future development or redevelopment.
- **Protect and increase the City's existing affordable housing stock.** Hoboken already has a significant number of affordable dwelling units. However, the supply of affordable housing units is threatened to be reduced as affordability controls expire. Maintaining the affordable housing stock requires vigilance on the part of the City and community to ensure that affordability controls remain in place.
- **Promote the rehabilitation of substandard housing units.** The use of government programs should be encouraged. For example, the Balanced Housing program administered by the New Jersey Department of Community Affairs funds the rehabilitation of housing already occupied by low- and moderate-income households. Municipal actions also can help encourage rehabilitation through measures such as zoning incentives and tax abatements for properties where a significant amount of affordable housing is created.
- **Update and enforce existing affordable housing regulations in the Zoning Ordinance.** Hoboken already provides measures mandating the creation of new affordable units in most developments, as well as enabling the collection of money in an affordable housing trust fund. These regulations should be reviewed for compliance with COAH's Substantive Regulations and other applicable requirements.
- **Provide additional affordable units in new residential developments.** As noted above, the City currently requires the provision of affordable units, or payment in lieu of creation, for most residential new construction or substantial rehabilitation. These regulations should be enforced, particularly for larger developments.
- **Improve enforcement and penalties for violations of rent control laws and affordable housing controls.** The City has existing ordinances regulating rents of certain rental housing units. Improved enforcement of such controls could help ensure that the maximum intended benefit is derived from these regulations.

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- **Encourage homeownership by low- and moderate-income households.** Hoboken should not only provide affordable rental housing. It should also help provide opportunities for residents of all income levels to own a home. Some ways to further this objective could include providing technical assistance programs for home improvements, encouraging mutual housing arrangements where a portion of rental payments is put aside for eventual acquisition of the unit, and conducting workshops and programs regarding homeownership opportunities. The State Housing and Mortgage Finance Agency also has programs for homebuyers, including loans and grants for housing rehabilitation, below-market mortgages, and assistance with down payments and other closing costs.
- **Create a "quality housing" model for new or rehabilitated housing.** This program would involve assigning points for the provision of amenities such as additional affordable units, three-bedroom or larger units, low-rise attached one-, two-, or three-family units, and public open space. A certain number of points must be attained to permit a development. In this way, developers are able to choose which features are most important.
- **Require a minimum average unit size in new developments.** This would allow developers to choose the mix of apartments, without permitting only smaller units that are not conducive to families.
- **Provide additional special purpose housing.** The City of Hoboken has a number of senior citizen housing developments. Yet the number of residents age 65 and older in Hoboken decreased by 5 percent from 1990 to 2000, even as the City's overall population increased by 16 percent during this period. The decrease in the number of seniors in Hoboken may be due to a limited supply of senior housing, particularly housing options such as assisted living and nursing homes. Providing a wider range of senior housing would enable residents to remain in the community as they age.
- **Encourage the use of incentives for affordable housing creation.** In particular, developers should consider utilizing the Low-Income Housing Tax Credit Allocation Program. This federal program provides tax credits as an incentive for the creation of affordable dwelling units. The requirements for this program include requiring a minimum of 20 percent of units in a tax credit development to be affordable to people with incomes 50 percent or less of median county income, or 40 percent of such units to be affordable to households with incomes of 60 percent or less of median county income.
- **Work with the banking community to provide housing and financing opportunities, such as through the Community Reinvestment Act.** Banks have a legal obligation to serve the entire community in which they are located. The banking community has been helpful in assisting with lending for homebuyers as well as financing new affordable housing in other areas. Hoboken should ensure that the banks serving the City have been active in this regard, and push to get additional involvement from the banking community in providing housing opportunities for low- and moderate-income residents.
- **In the short-term, work with the Hoboken Housing Authority to improve conditions for its residents.** The Housing Authority has over 1,000 units of affordable housing concentrated in the

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southwest corner of the City. Some improvements have been made to these developments in recent years. In the short term, additional improvements in this area could include better maintenance and provision of additional green spaces and recreation.

- **In the long-term, work with the Hoboken Housing Authority to create mixed-income developments and neighborhoods.** Consideration should be given to dispersing these units throughout the community, instead of concentrating them in one area. Any such program must maintain the same number of affordable housing units. A possible model for such action would be the Federal HOPE VI program, which was recently discontinued.